



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

83-1683

CONSOLIDATED PRECAST, INC.,
Plaintiff-Cross Petitioner,
- against -
CITY OF PATERSON,
Defendant-Respondent
On The Cross Petition.

On Writ of Certiorari To The Supreme
Court of New Jersey

PETITIONER'S REPLY BRIEF ON
PETITION FOR CERTIORARI

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PRELIMINARY STATEMENT

This Reply Brief is submitted on behalf of Cross-Petitioner Consolidated Precast, Inc. in response to the Brief in Opposition submitted by Respondent, City of Paterson. Consolidated joins in the well-presented arguments contained in the Reply Brief submitted by Petitioner J. Baranello & Sons. Rather than attempting to restate the arguments in this case, Consolidated takes this opportunity to briefly comment on the points raised by Respondent in its Brief in Opposition.

Consolidated also notes the additional proceedings in this case since the filing of its Cross-Petition. The arbitrators, upon resubmission of this matter in accordance with the direction of the Appellate Division of the New Jersey Superior Court, have rendered a supplemental and amendatory award in favor

of Consolidated. Consolidated has filed a petition for confirmation of the award in the United States District Court for the District of New Jersey.

This action was taken by Consolidated to protect whatever rights it has to that award in the event its Petition for Certiorari should be denied and to avoid any further delay in what has to this point been a long and arduous process toward final resolution of its claims. (It is to be noted that the original award was rendered more than two and one-half years ago.).

In view of the extreme time period already consumed in the Appellate process, Consolidated would most willingly accept a judgment by this Court reinstating the Judgment of the New Jersey Superior Court, Law Division confirming the original award

and would forego any rights to the amended award (which award apparently granted interest at the rate contained in the lower court judgment plus an amount of approximately \$3,000 for attorney fees on the remand).

POINT I

THE FEDERAL QUESTION WAS RAISED BELOW.

The City contends in its Factual Statement that "Cross Petitioners... did not assert a federal question until the Petition for Certiorari was filed with this Court." (P.4) Respondent relies upon this factual assertion in its argument in Point I of its Brief that certiorari should not be granted.

The above factual statement is simply and clearly in error. As set forth in Consolidated's Cross-Petition, the Federal Arbitration Act was raised before the New Jersey Supreme Court. Indeed, as required by the Rules of this Court, the portion of Consolidated's Petition for Certification filed with the New Jersey Supreme Court dealing with the

Federal question was reproduced in the Appendix to Consolidated's Petition for Certiorari.

It should be further noted that until the Appellate Division's opinion in the instant case, it was thought that the standards of review under the Federal and New Jersey Arbitration Acts were coextensive. It was only after the Appellate Division's opinion in the instant case that Respondent was disabused of this notion. It was the Appellate Division's decision, motivated quite clearly by a desire to go to all lengths to protect a political subdivision from a substantial judgment, that brought the difference in the substantive interpretation of the Federal and New Jersey Courts into fine focus.

It should be further noted that the applicability of the Federal Arbitration Act to proceedings in State Court was not made clear until the holding of this Court in Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. _____, 103 S.Ct. 927, 74 L.E.2d 765 (1983). Even with this Court's opinion in Moses H. Cone, the extent of the applicability of the act was questionable since this Court did not directly reach the question and only went so far as to state in dicta the applicability of §3 of the Act in State Courts. 460 U.S. _____; Slip Op. at pp. 23 and 24. It was not until this Court's holding in Southland Corp. v. Keating, 465 U.S. _____, 104 S.Ct. 852, 52 U.S.L.W. 4131 (1984) that this Court explicitly reached the issue of the enforceability of the Federal Arbitration Act in State Court proceedings. This

Court has never explicitly reached either the application of §9 of the Act in State Courts or the standards to be applied in such proceedings.

Based upon the foregoing, it is submitted that the Federal question raised herein was timely raised before the State Courts for the State of New Jersey and that the disingenuous argument of Respondent that it was not raised should be rejected by this Court.

POINT II

THE ARGUMENTS PRESENTED IN
RESPONDENT'S BRIEF IN OPPOSITION DO
NOT PROVIDE A BASIS FOR SUPPORT OF
THE DECISIONS OF THE NEW JERSEY
COURTS IN THE INSTANT CASE.

Implicit in the City's argument in Point II of its Brief is the admission by the City that it was accorded special treatment by the Appellate Division in the instant case. The City apparently recognizes that the Appellate Division, in seeking to protect a political subdivision from a valid arbitration award, applied a much stricter standard than that called for under the Federal Arbitration Act.

While recognizing that this stricter scrutiny occurred, the City makes no effort to justify it. Respondent does cite two New Jersey cases, Kearny P.B.A. Local No. 21 v. Kearny, 81 N.J. 208 (1979) and State v. State Troopers Fraternal Association, 91 N.J. 464 (1982). These

cases, however, deal with the relation between New Jersey public entities and their employees. Moreover, each of the cases deals with statutory limitations upon the contracting power of the public entities. Neither case stands for the proposition that when a New Jersey political subdivision enters into a contract for arbitration, it is entitled to special treatment in the Courts. Yet, it is just such special treatment that was received by the City in the New Jersey Courts and that is being urged by the City as a standard for this Court to adopt.

It is to be noted that the New Jersey Courts, while clearly engaging in stricter scrutiny of the proceedings than that called for under the Federal Arbitration Act, did not explicitly so state, nor did it set forth a basis or reason therefor.

Nonetheless, the holdings in this case undermine the policy of uniform enforcement of the Federal Arbitration Act whether in the Federal or the State Courts. The implied argument of the City that a political subdivision is entitled to greater protection in the Courts of its own State in connection with arbitration is quite clearly inimical to this policy.

It is submitted that this concept of special treatment, implied in the opinion of the Court below, should be swiftly and clearly rejected by this Court.

CONCLUSION

The holdings of the New Jersey Courts in the instant case represent a serious departure from the twin policies of fostering arbitration as an alternative method of dispute resolution and the uniform enforcement of the Federal Arbitration Act. As noted in the Reply Brief of Petitioner Baranello, the decision represents an extension of a disturbing trend toward stricter scrutiny in the New Jersey Courts to the realm of arbitrations covered under the Federal Arbitration Act.

The negative implications of the New Jersey Courts' holdings and the damaging effect upon the arbitration process have been amply outlined in the papers submitted to this Court and indeed in the history of the within action and the delay

to justice engendered by the actions of the New Jersey Courts.

It is submitted that in order to advance the policies contemplated by Congress in the enactment of the Arbitration Act and to avoid other State Courts following the lead of New Jersey in allowing political considerations to subvert those policies, a swift and decisive statement from this Court is necessary.

For the foregoing reasons, Baranello's Petition and the Cross Petitions for Certiorari to the Supreme Court of New Jersey should be granted by this Court.

Dated: Hackensack, New Jersey
June 4, 1984.

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